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WESTERN AMERICANA

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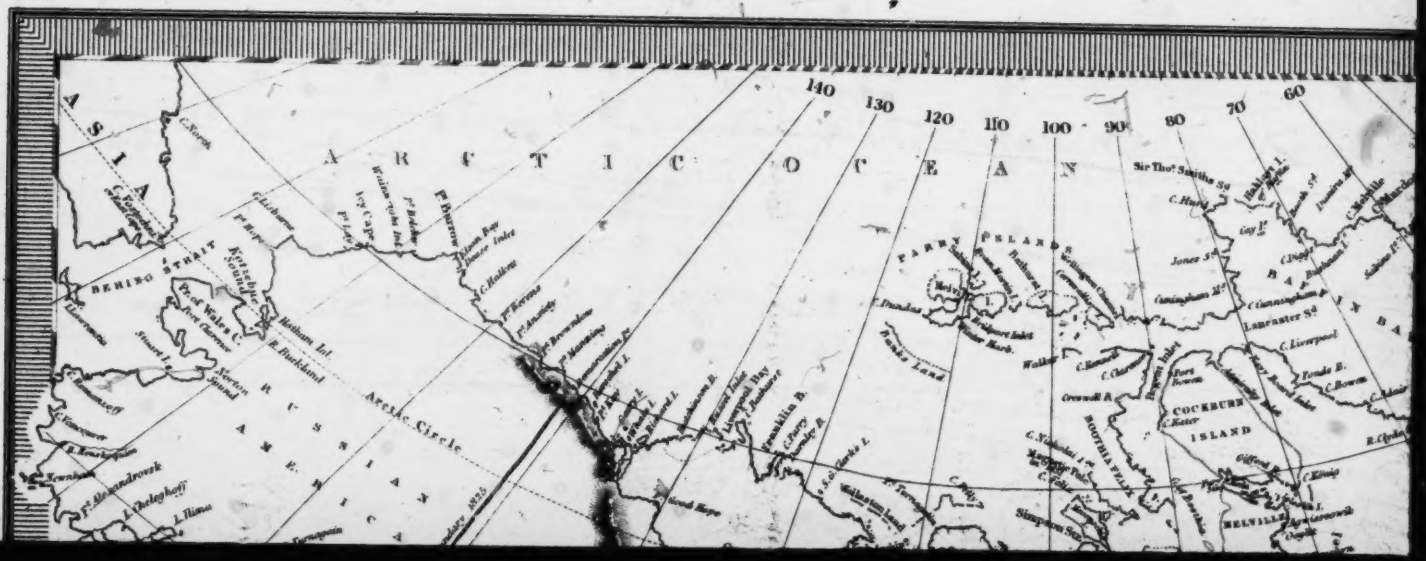
ASIA
ARCTIC OCEAN
AMERICA
RUSSIAN
BERING STRAIT
Arctic Circle
140
130
120
110
100
90
80
70
60
PARRY ISLANDS
COCKBURN ISLAND
MELVILLE
Prince of Wales C.
Port Clarence
Kotzebue Sound
Norton Sound
Behring Int.
R. Buckland
Wainwright Inlet
Franklin B.
Liverpool Bay
Mackenzie R.
Barrow Str.
Lancaster Str.
Sir Thos. Smiths Str.
Jones Str.
Cunningham Str.
Prince Regent Inlet
Fury and Hecla Str.
Melville I.
Banks Land
Wollaston Land
Victoria Land
Parry Peninsula
Boothia Felix
Gulf of Boothia
Fury Beach
Port Bowen
Port Leopold
Port Neill
Port Elizabeth
Port Dundas
Port Croker
Port Nelson
Port Essington
Port Bathurst
Port Cockburn
Port Dalrymple
Port Phillip
Port Jackson
Port Macquarie
Port Curtis
Port Denison
Port Bowen
Port Leopold
Port Neill
Port Elizabeth
Port Dundas
Port Croker
Port Nelson
Port Essington
Port Bathurst
Port Cockburn
Port Dalrymple
Port Phillip
Port Jackson
Port Macquarie
Port Curtis
Port Denison

G R E E N L A N D
East Greenland
Arctic Circle
West Greenland
CUMBERLAND
Baffin's Bay
Davis Strait
Hudson's Straits
Cape Farewell
Cape Walsingham
Cape Mercy
Cape Chidley
Resolution I.
Savage Islands
Button Islands
Hopedale
Okkak
Nain
Hebron
Okkasoksoah
Frobisher's Strait
Lumley Inlet
Cumberland Inlet
Exeter Sound
Home Bay
Hudson's Sound
Lancaster Sound
Barrow's Strait
Prince Regent's Inlet
Melville Island
Banks Land
Prince of Wales Land
Boothia Land
Regent Inlet
Fury and Hecla Strait
Repulse Bay
Wager River
Southampton Island
Mansfield Island
Nottingham Island
Salisbury Island
Resolution Island
Cape Dyer
Cape Walsingham
Cape Mercy
Cape Chidley
Cape Farewell
Hopedale
Okkak
Nain
Hebron
Okkasoksoah
Resolution I.
Savage Islands
Button Islands

NORTH PACIFIC OCEAN
Boundary 1825
Cook's Inlet
Prince William's Sound
Cross Sound
Sitka I.
New Archangel
Baranow I.
Chatham Str.
Pt. Frederick
Qr. Charlotte
Qr. Charlotte Str.
Juan de Fuca Str.
R. Columbia or Oregon
Whidby R.
Wallamet R.
Umpqua R.
C. Orford
Trinidad R.
C. Mendocino
Pt. Reyes
Pt. S. Francisco
Monterey
S. Antonio
S. Luis Obispo
Conception Pt.
S. Pedro
S. Diego
Sierra Nevada
CALIFORNIA
Sandy Plain
NEVADA
Large Swamp
Chesterfield Inlet
Repulse Bay
Melville Island
Prince of Wales I.
Fort Simpson
Fort Vancouver
Fort Hall
Fort Colville
Fort Boise
Fort Nez Percés
Fort Walla Walla
Fort Okanagan
Fort Kamloops
Fort Alexandria
Fort George
Fort Babine
Fort Connolly
Fort Chipewyan
Fort Resolution
Fort Simpson
Fort Liard
Fort Norman
Fort Good Hope
Fort Yukon
Fort Halkett
Fort Nelson
Fort Dunvegan
Fort Vermilion
Fort Assiniboine
Fort Edmonton
Fort Augustus
Fort Pitt
Fort Carlton
Fort Ellice
Fort Qu'Appelle
Fort Pelly
Fort Ellice
Fort Garry
Fort Alexander
Fort Frances
Fort William
Fort Wellington
Fort Chimo
Fort Churchill
Fort Severn
Fort Albany
Fort Moose
Fort Abitibi
Fort Temiscamingue
Fort Coulonge
Fort Wemyss Bay
Fort Brule
Fort Caribou
Fort Chippewa
Fort Gibraltar
Fort Michilimackinac
Fort Wayne
Fort Dearborn
Fort Clark
Fort Crawford
Fort Snelling
Fort Union
Fort Mandan
Fort Pierre
Fort Leavenworth
Fort Gibson
Fort Towson
Fort Jesup
Fort Brady
Fort Niagara
Fort Erie
Fort Stanwix
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Fort Gibson
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Fort Jesup
Fort Brady
Fort Niagara
Fort Erie
Fort Stanwix
Fort Ontario
Fort Oswego
HUDSON BAY
UNITED STATES
L. Michigan
L. Superior
L. Winnipeg
L. Athabasca
L. Wollaston
L. Manitou
L. Nipigon
L. Nipissing
L. Simcoe
L. Ontario
L. Erie
L. Huron

FROBISHER STRAIT
HUDSON STRAIT
LABRADOR
NOVA SCOTIA
NEW BRUNSWICK
LOWER CANADA
NEW YORK
PENNSYLVANIA
MARYLAND
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
L. Michigan
L. Huron
L. Ontario
L. Erie
ATLANTIC OCEAN
26 = One Degree

NORTH AMERICA
Published under the Superintendance of the Society for the Diffusion of Useful Knowledge
London, Chas. Knight & Co. 22, Ludgate Street.
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Engraved by J. & C. Walker.

PREFACE.

THE following pages are a reprint of an argument relating to the pretensions of the American Government to the Oregon Territory, contained in a small work which I lately published, entitled, 'On the Discovery of the Mississippi, &c.' Some additions to it have been suggested by a work of a very intemperate character, written by Mr Farnham, and largely circulated in America, which contains statements that I could not have anticipated, and which it is right to notice. The subject itself, unfortunately, has obtained a new importance through the extraordinary conduct of the House of Representatives at Washington in passing a Bill for the Occupation of the Oregon Territory; a measure which, if it should become law, the general Government of the United States is incapacitated to enforce, so long as it shall respect the solemn obligations of an existing treaty. It may be rejected by the Senate, and very probably will be, but

there is too much reason to believe that the new Congress, which meets in December next, will entertain it with more favour, unless the impropriety and injustice of it shall be more generally understood in America than at present.

T. F.

PUTNEY, MARCH 12, 1845.

THE

OREGON QUESTION.

The discussions respecting the Oregon Territory involve an argument on the legal rights of the British government to the territory in dispute. They may portend a storm, and at present there is something unpleasant in them, from the violence of the language used in America, and the participation of the chief men of that country in attacks on the English government. But they may exhaust themselves, and there may be a calm for a time. Nevertheless, the necessity for the settlement of the dispute is urgent, whether hostility is intended, or pacific dispositions shall happily prevail.

The chief works published in America on the subject, are—

1. The History of Oregon and California, and the other Territories on the North-West Coast of America. By Robert Greenhow, Librarian to the Department of the United States. Boston, 1844. 8vo. Pp. 482.

2. History of the Oregon Territory, it being a Demonstration of the Title of the United States to the same. By Thomas J. Farnham, New York. 1844. Pp. 80.

3. Report of a Committee of House of Representatives, of the 28th Congress, to whom was referred the Bill, No. 21, "to organize a Territorial government in the Oregon Territory, and for other purposes." March 12, 1844.

So much irrelevant matter is contained in these works, that the answer to them may be condensed in a few pages. The reply may, perhaps, be dry enough in being confined to the material facts of the case, but it is certainly not advisable to imitate the desultory tactics of the American disputants.

The foundation of the American claim to the Oregon Territory depends on the extent of the country known by

the name of Louisiana, at the time that it was purchased by the American government in 1803, and on the effect of a treaty made with the government of Spain in 1819.

The first French colony in Louisiana was established by a distinguished Canadian, named D'Iberville, under the authority of a commission from Louis XIV, granted to him for this express purpose, and the country remained subject to the dominion of France until the year 1762.

By the treaty of Paris, agreed upon in November, 1762, and signed the 10th of February, 1763, and made between the governments of England, France, and Spain; the countries of Nova Scotia, Canada, and Cape Breton, were ceded to England, and the eastern limits of the remaining French settlements "were irrevocably fixed by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle to this river and the Lakes Maurepas and Ponchartrain to the sea." The river and Fort of Mobile, and everything which France possessed on the left bank of the Mississippi being ceded, "except the town of New Orleans and the island on which it is situated."

By the 20th article of the same treaty, the government of Spain ceded to England that portion of North America called Florida, with Fort St Augustin and the Bay of Pensacola, and all that it possessed on the continent of North America to the east or south-east of the river Mississippi.

By a secret treaty made Nov. 3, 1762, and signed the same day on which the preliminaries of peace between Great Britain, France, and Spain, were signed,—the government of France ceded to that of Spain "all the country known under the name of Louisiana, as also New Orleans and the island on which that city is situated"—that is, so much of Louisiana as had not been agreed to be transferred by France to Great Britain.

On the 3rd of September, 1783, by the treaty made between Great Britain and Spain,—East and West Florida were ceded by Great Britain to the Spanish government, which thus became again possessed of these its ancient colonies.

By the treaty made on the 3rd of September, 1783, between Great Britain and the United States of America,

the independence of these states was recognised, and their north-western, western, and southern boundaries were thus described:—"By a line through the middle of Lake Erie until it arrives at the water communication between that lake and Lake Huron; thence along the middle of the said water communication into the Lake Huron, thence through the middle of the said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Philipeaux, to the Long Lake; thence, through the middle of Long Lake and the water between it and the Lake of the Woods, to the Lake of the Woods; thence through the said lake to the most north-western point thereof; and from thence, on a due west course, to the River Mississippi; thence, by a line drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the 31st degree of north latitude—south, by a line to be drawn due east from the determination of the line last mentioned in the latitude 31 degrees north of the equator to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of the St Mary's River, and thence along the middle of the St Mary's River to the Atlantic Ocean."

There was one error in this otherwise clearly defined boundary:—the head waters of the Mississippi River are south of the Lake of the Woods, and, consequently, a line carried due west from the lake would not touch the river. The clear intention of both parties was to terminate the boundary where this junction was expected to take place—where, if the Mississippi had continued in a course N. it would have intersected the line running due west from the Lake of the Woods. This obvious correction of the mistake is adopted in the map lately published in America by Mr Greenhow, in which a dotted line from the head waters of the Mississippi to the line running due west of the Lake of the Woods completes this boundary. But nothing west or north of this line was granted by Great Britain to the United States in 1783, and nothing north of the head waters of the Mississippi was retained by France under the treaty of 1763.

On October 1, 1800, Louisiana was retroceded by Spain to France "with the same extent that it now has in

the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states." It was an act of retrocession, but it transferred so much less than France originally held, as had been shorn from it by the treaty of 1763, which gave to Great Britain, and through Great Britain to the United States, nearly the entire eastern bank of the Mississippi.

In 1803, with the consent of Bonaparte, then First Consul, Louisiana was sold to the United States for eleven million of dollars. The purchase included all lands "on the east side of the Mississippi River [so as to include New Orleans], not then belonging to the United States, as far as the great chain of mountains which divide the waters running into the Pacific and those falling into the Atlantic Ocean; and from the said chain of mountains to the Pacific Ocean, between the territory claimed by Great Britain on the one side and by Spain on the other."—('History of the Federal Government,' by Alden Bradford, LL.D., Editor of the Massachusetts State Papers. Boston, 1840. P. 130.)—No point was mentioned where the line in the chain of mountains was to commence, nor where the tract of land lay, forming a portion of Louisiana, lying between the territory claimed by Spain and Great Britain. France had nothing to sell but what constituted Louisiana after the cession made to Great Britain in 1763. There was, nevertheless, inserted, in this treaty of sale, a reference to a perfectly undefined line to the Pacific, having no defined point of commencement, and referring to territory having no definable boundary either on the north, or the south, or on the east. But before the treaty for the purchase was completed, President Jefferson, in a letter dated August 12, 1803, wrote thus to Mr Breckenridge:—"The boundary which I deem not admitting question are the high lands on the western side of the Mississippi, inclosing all its waters—the Missouri, of course—and terminating in the line drawn from the north-western point, from the Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States. We have some claims to extend on the sea-coast west-

* Mr Greenhow, in his elaborate work on the Oregon question, has omitted all notice of this very important passage.

wardly to the Rio Norte or Bravo—and better to go eastwardly to the Rio Perdido between Mobile and Pensacola, the ancient boundary of Louisiana." It is evident, therefore, that at this time no French title to any line running beyond the mountains on the west was known to have existed.

In 1819, Don Louis de Onis was commissioned, on the part of the government of Spain, to confer with the government of the United States on the south-western boundary of Louisiana. The negotiations were terminated by the treaty called the Florida Treaty, signed at Washington on the 22nd of February, 1819.* The south-western boundary of Louisiana had previously been the Arroyo, midway between Nachitoches and the Adeas, this having been the dividing line in 1762, before the cession of Louisiana to Spain. By this treaty the boundary west was fixed to be the River Sabine to the 32nd degree of latitude; thence due north to the Rio Roxo or the Red River of Nachitoches; thence westward along this river to the degree longitude 100 west from London (*quære*, Greenwich) and 23 from Washington; thence due north to the River Arkansas; thence to its source in 42° latitude; or if the source is north or south of latitude 42°, along a line

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* In consequence of the omission, on the part of the Spanish government, to ratify this treaty within the time agreed on, President Munroe, in his message of December 11, 1819, asserted some principles which were entirely forgotten by General Cass and Mr Wheatson when the ratification of the late treaty between Great Britain and France was pending. "The government of Spain had no justifiable cause for declining to ratify the treaty. A treaty concluded in conformity with instructions is obligatory, in good faith, in all its stipulations, according to the true intent and meaning of the parties. Each party is bound to ratify it. If either could set it aside, without the consent of the other, there would no longer be any rules applicable to such transactions between nations. By this proceeding the government of Spain has rendered to the United States a new and serious injury."—"By this proceeding Spain has formed a relation between the two countries which will justify any measures, on the part of the United States, which a strong sense of injury and a proper regard for the rights and interests of the nation may dictate. In the course to be pursued these objects should be constantly held in view, and have their due weight. Our national honour must be maintained, and a new and distinguished proof be afforded of that regard for justice and moderation which has invariably governed the councils of this free people."

due north or south until it meets the parallel of latitude 42°; and thence along this parallel to the Pacific.

Thus was the undefined line (ante, p. 8) from the Rocky Mountains to the Pacific inserted in the agreement for the purchase of Louisiana converted into a defined line.

A sweeping clause was included in the Florida Treaty, by which the United States ceded to Spain and "renounced for ever" all rights, claims, and pretensions to territories lying west and south of the described boundary, and Spain ceded to the United States all rights, claims, and pretensions to territories east and north of this boundary. On this clause the claim of the United States to the Oregon Territory chiefly depends.

As the treaty was negotiated in order to carry into effect the transfer of Louisiana, it is material to ascertain how far to the west this province extended when the sale of it was made.

The first notice of the western boundary of Louisiana, of any authority, is in the grant made, September 17, 1712, by Louis XIV. to Crozat. This grant empowered him "to carry on exclusively the trade in all our territories by us possessed and bounded by New Mexico, and by those of the English in Carolina; all the establishments, ports, harbours, rivers, and especially the port and harbour of Dauphin Island, formerly called Massacre Island; the River St Louis, formerly called the Mississippi, from the sea-shore to the Illinois; together with the River St Philip, formerly called the Missouri River, and the St Jerome, formerly called the Wabash (the Ohio), with all the countries, territories, lakes inland, and the rivers *emptying themselves directly or indirectly into that part of the river St Louis.* All the said territories, countries, streams, and islands, we will to be and remain comprised under the name of 'THE GOVERNMENT OF LOUISIANA,' *which shall be dependent on the general government of New France, and remain subordinate to it;* and we will, moreover, that all the territories which we possess on this side of the Illinois be united, as far as need be, to the general government of New France, and form a part thereof, reserving to ourselves to increase, if we think proper, the extent of the government of the said country of LOUISIANA."

This document defined with tolerable precision the province of Louisiana. It was partly bounded on the west by

New Mexico; it did not extend beyond the Rocky Mountains, for the rivers emptying themselves into the Mississippi have their sources on the east side of these mountains, and it was to reach the Illinois to the north. It was also declared that the government should be dependent on the general government of New France—that was, subject to the superior authority of the Governor of Canada. Some years subsequently the Illinois was added to Louisiana. New Mexico bounded it, at least as high as 41 degrees, or above the source of the Rio del Norte. There was no strip of land to the west belonging to France, as mentioned in the purchase of 1803, "lying between the territory claimed by Great Britain on the one side and Spain on the other;" and Mr Greenhow admits "that we are forced to regard the boundaries indicated by nature—namely, the highlands separating the waters of the Mississippi from those flowing into the Pacific or the Californian Gulf—as the true western boundaries of Louisiana, ceded to the United States by France in 1803."—(Greenhow, p. 283.)

The consequence, therefore, is, that the purchase of Louisiana included so much territory as was bounded on the north by a line running from *the source* of the Mississippi due west to the mountains (ante, p. 7); on the west by the mountains; on the east by the River Mississippi; and on the south by the Gulf of Mexico.

A still more important consequence is, that the title to the territory claimed by the United States, west of the mountains—so far as it depends on any alleged *Spanish* rights—dates from the year 1819, and is derivable from the Florida Treaty made with Spain, and not from the purchase of Louisiana. The agreement with France in 1803 professed to give "a line" across some country lying between the territory claimed by Spain and Great Britain, which the government of France had no title to interfere with, and the Florida Treaty, which was made between Spain and the United States, in order to carry into execution that made between France and the United States, defined the northern boundary of Mexico to be a line running along the 42nd parallel of latitude, from the mountains to the Pacific, and accompanied it with a cession of Spanish rights to the north (ante, p. 10). On the conclusion of this treaty it was contended, on the part of the United States, that Great Britain had no title to any

territory north of that parallel, on the ground that no other country but Spain had a right to such territory. It is, consequently, material to ascertain what were the English claims to the Oregon Territory prior to the year 1819, that is, to the territory not forming a part of Louisiana in 1803.

The government of Spain during its possession of Mexico never made any settlement on the western coast north of Cape Mendocino (lat. 40° 29′ N.). It was a vacant territory, subject to the same rules of settlement that had governed the settlement of other portions of North America. "Having touched only here and there upon a coast," said Queen Elizabeth to the Spanish Ambassador, "and given names to a few rivers or capes, were such insignificant things as could in no ways entitle them (the Spaniards) to a propriety farther than in the parts where they actually settled and continued to inhabit." And the principle embodied in this speech has been the rule acted on by nearly every European nation.

The discovery of the coast north of Cape Mendocino was made by Drake, and the argument in support of this fact has been well stated in the *Morning Chronicle* in these words:—

"It suits Mr Greenhow's purpose to treat a portion of Sir Francis Drake's discoveries on the north-west coast of America as extremely fabulous, whilst he accords credit, even then somewhat qualified, to such as will not interfere with the claims of his countrymen. Such a line drawn between one portion of the deeds of the naval hero and another is, as we shall see shortly, somewhat disingenuous. It is an important point in Mr Greenhow's case, however much he may pretend to undervalue it, to ward off Drake and his companions from the disputed coast, so far as all latitudes above 43 deg. north are concerned. From what he states in p. 124, he is not exactly sure that Drake saw the coast as far north as lat. 43 deg. In speaking of the first discovery of the Columbia River by Bodega and Maurelle, who sailed under the command of Heceta, he there says, that, 'Of these coasts, the portion south of the 43rd degree of latitude had been seen by Ferrelo in 1543, and *possibly* by Drake in 1578.' Now all the land north of lat. 38 deg. seen by Drake in 1578, was unappropriated when Drake visited it, and took possession of it, giving it the name of New Albion, and, as such, it is found on French and Spanish maps of an old date, the southern boundary of New Albion lying then many degrees to the southward of what

is now the northern limit of Mexico. But it is Mr Greenhow's purpose to prevent New Albion at all hazards from embracing the Columbia. Drake *possibly*, says Mr Greenhow, touched the coast, as far north as lat. 43 deg. Had it been lat. 42 deg. instead of 43 deg.—the former being the southern boundary assigned since 1819 to the Oregon territory —he might not have been so ready to throw any doubt upon that parallel as the extent of Drake's discovery to the northward—for Drake might have ascended as far as the forty-second parallel, without embracing within the limits of New Albion one single degree of the territory now claimed by the United States. Mr Greenhow cares not what force the claims of Drake as a discoverer may have south of lat. 43 deg., or rather 42 deg., as any claim which might in that case be founded upon his discovery by the British government would bring it exclusively in collision with Mexico, but New Albion not only embraced a considerable portion of territory now included within the limits of Mexico, but also extended several degrees to the northward of the 42nd parallel of latitude; at all events, sufficiently so to embrace within the scope of Drake's discoveries the mouth of the Columbia. This is by no means an unimportant point for us to establish, inasmuch as it puts beyond a doubt the superiority of our claims in our after disputes with Spain, and consequently the futility of the claim which the United States now set up—by virtue of cession from Spain.

"That Drake did *not* discover the north-west coast as far as lat. 48 deg., is a proposition based, as Mr Greenhow admits, on no positive evidence; yet, on the other hand, says he, the assertion that he did 'is not supported by sufficient evidence,' and 'where originally made, it is accompanied by statements certainly erroneous, and calculated to destroy the value of the whole testimony.' The erroneousness of these statements we shall consider by-and-by, after following, in brief detail, the course of the British discoverer on this—until his day—unknown coast.

"To do so satisfactorily, we must pay some attention to dates, and to geographical positions. That Drake had crossed the 42nd parallel of latitude, by the 3rd of June, 1579, is a matter admitted on all hands. The controversy turns upon his movements between this date and the 17th of the same month, when he sought shelter in a small bay, situated in lat. 38 deg., and where he remained five weeks repairing his vessel and trafficking with the natives. Of these movements we have two different accounts, prepared by two members of the expedition, varying from each other in matters really unimportant,

but by no means, in the general conclusion which they each tend to establish, contradictory of each other. Mr Greenhow gives us to understand that a considerable interval of time elapsed between the publication of these two accounts, from which he insinuates an unfavourable inference in regard to that latest published, owing to the length of time which elapsed between its appearance and the conclusion of the voyage—a consideration from which we are inclined to infer favourably of both accounts, establishing, as it does, the entire absence of concert or collusion between their respective authors, whilst all apprehensions of mistake or forgetfulness on the part of the author of that latest published are removed by the fact that his account was prepared for publication from notes taken during the *actual* progress of the expedition. That Mr Greenhow deems it important to divert Drake from the Columbia is evident from the anxiety he displays to make it appear that, after the 3rd of June, the course of the British admiral was southward to the bay above named, in lat. 38 deg. In 'The World encompassed by Sir Francis Drake,' one of the two narratives just alluded to, Fletcher, a preacher attached to the expedition, tells us that on the 3rd of June they were in lat. 42 deg., and that on the 5th of the same month they anchored near the shore in a 'bad bay,' in lat. 48 deg., but that, being driven from this bay by the violence of the winds, they ran southward along the coast, until they reached lat. 38 deg., where they found the harbour in which their vessel was refitted. Pretty, in his 'Famous Voyage of Sir F. Drake,' states that on the 5th of June the vessel was in lat. 43 deg., when it was determined to seek the land. There is certainly here a slight difference in dates, but far from sufficient to throw discredit upon the narratives, when we consider the more important points in which they do not thus conflict. Pretty does not mention at what particular point land was first made, but he informs us that when they did make it, finding no proper harbour, they coasted in a southerly direction until the 17th of the same month, when 'it pleased God to send them into a fair and good bay, within 38 deg. towards the line.' They both, therefore, agree that land was made about the 5th, and that it was because a harbour sufficiently good could not be found when they first approached it, that they ran to the southward, until they at length found, in lat. 38 deg., what they were in quest of,—an available harbour. It appears, then, from Fletcher, that the point where they first made land was in lat. 48 deg., whilst there is nothing in Pretty's account to contradict this assertion. In disproof, however, of the assertion that Drake discovered the coast as far north as the

48th deg. of latitude, Mr Greenhow assures us that, 'in the first place, it would be difficult, if not impossible, for any vessel in two days to pass through six degrees of latitude northward, with the wind, as we are assured by both accounts, blowing constantly and violently from the north and north-west; and that much confidence cannot be placed on assertions as to latitude, based on observations made in a vessel on a stormy sea, with imperfect instruments, and when the atmosphere was generally charged with thick fogs.' As to the first objection, it might be quite true that, under such unfavourable circumstances, no vessel could traverse six degrees of latitude; but it does not necessarily follow that, because the wind was blowing violently from the north and north-west, Drake's course must have been *due north*, to reach the 48th parallel. To ensure this, he must have been close upon the land on the 3rd of June, when he was in latitude 42 or 43 degrees—an improbable conjecture, when we consider that, from the time when he had left the American coast, in latitude 16 degrees, until the 3rd of June, when it was determined to make land again, his course had been west and north-west; so that on that day, on reaching latitude 43 degrees, he must have been far to the westward of the coast. His object was to find a passage to England by a northern route—afraid to attempt the route by Cape Horn, or the Straits of Magellan, for fear he should be intercepted by the Spaniards, who he knew were on the look out for him, to recover the booty he had secured by the plunder of their towns and shipping. In attempting to make land, therefore, on the 3rd of June, nothing would be more likely than that he should shape his course to the north-east, which, with the wind a-beam, if blowing from the north-west, would enable him to make, without much difficulty, from five to six degrees in the course of two days. There is not, therefore, the glaring impossibility in the matter which Mr Greenhow would have us to believe. As to his objection to the doubtful nature of their observations, it would apply as much to their observations on the 3rd as on the 5th of June. Mr Greenhow, in maintaining that latitude 42 or 43 degrees was the highest attained by the expedition, and which was attained from the 3rd to the 5th of June, throws no doubt upon the correctness of the observations which ascertained this—in his estimation—the highest point gained. But between the observations of the 3rd and those of the 5th, that Columbia River was included, and this is the only reason that we can perceive why Mr Greenhow should seek to throw discredit on the latter, for we are not told that the sea was more stormy, the instruments more imperfect, or the fogs thicker on the 5th

than they were on the 3rd.' But we do not rest our case solely upon the correctness or the incorrectness of these observations of latitude. There are other circumstances mentioned in connexion with the expedition which serve to put the correctness of these observations in the clearest light, whilst these circumstances are in turn supported and borne out by them. In the first place, we are told of the severe cold which the crew encountered before Drake finally abandoned the coast. The description given of the climate Mr Greenhow characterises as an 'intentional untruth.' We should like to know from Mr Greenhow what purpose the relators could have served, or wished to serve, in giving a statement of this kind to the world *intentionally untrue*. There was no boundary dispute then—there was no antagonist claim to the territory to be rebutted; they did not foresee the future importance of the coast, nor the disputes which would arise concerning it. The future claim of the United States and the United States themselves were then alike in the womb of futurity, undreamt of by the most visionary of that day. They could have no possible motive for deviating from a plain, straightforward statement of what they saw and what they experienced. Besides, if they exaggerated a little in speaking of the weather, it does not follow that they were dealing in wholesale falsehoods, or that their narratives were *in toto* vitiated by the little extra colouring which they may have given to their descriptions of the climate. It must be remembered that they had suddenly ascended from the tropics to an inhospitable latitude, and were, therefore, in a condition to feel the cold more severely than they would otherwise have done. This may sufficiently account for their imputing, if they did so, exaggerated rigour to the climate. But we are far from being assured that they did. The writer of this has encountered a severe snow storm in the Gulf of St Lawrence, on the opposite coast of America, and precisely in the same latitude, on the 3rd day of June, the ropes and sails being at the same time stiffened with ice. Mr Greenhow's experience of the genial latitudes of Washington may render him as incredulous to such statements as was the King of Siam in regard to the statement that water sometimes assumed a form in which it could support an elephant. We do not say that snow and ice are common occurrences in the Gulf of St Lawrence in the month of June, nor does it at all follow that they are so on the Pacific coast between the 43rd and 48th parallels, from the accounts furnished us by the comrades of Drake; but it is by no means so impossible as Mr Greenhow imagines it, that in June, 1579, the weather on the north-west coast may have been as rigorous as it is depicted to have been.

"There is another important statement to be found in these narratives which must not be overlooked. In Fletcher's account we are told that the adventurers 'searched the coast diligently, even unto the 48th degree, yet they found not the land to trend as much as one point in any place towards the east, but rather running on continually to the north-west, as if it went directly to meet with Asia.' If anything were wanting to prove that Drake and his companions ascended to a much higher latitude than 43 degrees, it is abundantly furnished in this account of the inclination of the coast at the point whence they deemed it advisable to return. Whatever doubts Mr Greenhow may attempt to throw upon their observations of latitude, he admits that their observation of the coast, so far as they state it to trend in no one point to the east, is perfectly accurate. So it is; for the direction of the coast from Cape Mendocino to about the 48th degree of latitude is almost due north. If, then, they were competent to judge of the inclination of the coast at one point, they were equally so to judge of it in another. The same parties who state, very correctly, that the land did not trend at all to the east, state also that they at length found it inclining in a north-westerly direction, as if stretching towards Asia. Mr Greenhow, however, chooses to consider them, in this latter point, as either again deceived, or as guilty of another 'intentional untruth;' and he triumphantly assures us that their whole testimony is invalidated, inasmuch as the land nowhere inclines to the north-west between the 40th and 48th degrees, but runs nearly due north. Very true, Mr Greenhow; but what do we find to be the case just at the 48th degree of north latitude? Simply that at this precise point, the western coast of North America makes a remarkable deviation from its previous northerly direction, and runs thence in a course as nearly due west as before it ran due north. This is a circumstance which could not fail to impress itself upon any one who had seen the coast at this point. Had Fletcher been drawing on his imagination in making this statement—had he been hazarding a conjecture, instead of stating a fact which had come under his observation, he would more likely have given the coast a north-easterly than a north-westerly direction; for it was under the firm conviction that the coast somewhere in these northern latitudes so inclined to the eastward as to allow them to proceed by a northern route to Europe, that they had ascended into these latitudes at all. But Mr Greenhow, for precisely the same reason that he would throw discredit on their accounts of the climate, attempts to throw discredit also upon Fletcher's description of the north-westerly direction of the

coast. He would thus treat the former, because the intensity of the cold, as represented in the narratives, presupposes a higher latitude than 43 degrees, to which he would confine Sir Francis Drake; and he would discredit the latter, because, by showing that the admiral had reached the point where the land inclined to the north-west, he had in fact reached the 48th parallel of latitude, the point assigned by Fletcher, and not denied by Pretty. We have already seen that Mr Greenhow himself does not call the accuracy of the narrative in question when he describes the direction in which the land from 43 deg. to 48 deg. *did and trend*; and he cannot be allowed, to suit his own views, to attempt to falsify the statement of the same individual, when he describes how it *did trend* when the expedition reached the point where the coast first assumed its north-westerly inclination. He who is competent to say correctly that, in a distance of about 500 miles, a coast does not stretch at any point to the eastward, is surely competent to say when it stretches to the westward; and when his statement in both cases tallies with what is now universally known to be true, he cannot be justly suspected of falsehood in the one case when he is admitted to have told the strict truth in the other.

"But it is more convenient for Mr Greenhow to discredit his statement—as to having seen the coast running to the north-west—than to allow that the expedition reached a point where the coast did so incline; for if Fletcher told the truth, the expedition did reach that point; and if it did reach that point, it reached latitude 48 degrees, and, consequently, ascended nearly two degrees above the latitude of the mouth of the Columbia.

"Thus, then, we see, that there is every reason to believe that Drake's discoveries on the north-west coast extended as far north as the 48th parallel of latitude, that is, about two degrees north of the Columbia River, and from 5 to 6 deg. north of the point which Mr Greenhow is willing to admit that he reached. We see that his course from the 3rd of June, when he determined to make land, was a north-east, and not a southerly course, as Mr Greenhow would have it to be; a conclusion which better tallies with the time at which he reached the bay in la[illegible] deg., than if he had steered directly south from the 43rd [illegible]rallel. We have seen that Mr Greenhow deems it unlikely that Drake could have ascended from 5 to 6 degrees to the northward, against northerly winds, in the short space of two days (that he was compelled thus to encounter head winds, however, being an erroneous conjecture, considering Drake's probable position on the 3rd); but is it not much more unlikely t[illegible]t he would have taken from twelve to four-

teen days to sail from 4 to 5 degrees to the southward, with a favouring north wind blowing all the time; for he did not reach the bay in which he refitted until the 17th? The whole of that time, however, might easily have been consumed in first ascending to latitude 48 degrees; and then, on finding no available harbour there, proceeding cautiously to the southward, until he entered what is considered to be the bay at present known as the Bay of San Francisco. Until, therefore, an equally authenticated discovery can be shown to have taken place prior to this period, of this same coast, in favour of Spain, the title of England to the ultimate exclusive sovereignty of the territory must stand unaffected by the pretensions of Spain, or those of any other power seeking to derive a right through her."

Between titles founded on mere *discovery*, the discovery of Drake gives a priority. But as the English made no settlement until about the year 1790, the interval of two centuries would establish the fact of an abandonment of an intention to settle, if previous to 1790 the government of any other country had made a settlement on the coast; for there can be no question, that mere discovery is not alone a complete title to possession.

The first voyage made by the Spaniards along the western coast of America, which it is necessary to notice, is that made by Juan Perez in 1774. The last voyage previously made by the Spaniards on this coast occurred as far back as the year 1603. No official account of the expedition of Juan Perez has been published, but it has been inferred that he discovered *Nootka Sound;* though it is admitted, at the same time, that the discovery of this important harbour is by general consent assigned to Captain Cook; and that the government of Spain "has deprived itself of the means of establishing beyond question the claim of Perez to the discovery."—(Greenhow, p. 117.)

On the return of Perez another expedition was sent to the North Seas by the Spanish government. It consisted of two vessels, the 'Santiago,' commanded by Don Bruno Hecetz, and the 'Sonora,' commanded by Don Juan Francisco de la Bodega y Quadra, who succeeded Ayala after the vessel sailed, and who had with him Maurelle as pilot. Soon after leaving the Isle de Dolores, north of the Columbia, the vessels parted company. Bodega proceeded north beyond the 56th degree of latitude, and examined the coast now belonging to and possessed by Russia. The

'Santiago' returned, and on the 15th of August, 1775, Heceta observed an opening in the coast in lat. 46° 17', from which rushed a current so strong as to prevent his entering. This fact convinced him of the existence of a river, and he placed it on his chart, under the name of the Rio St Roc. —(Greenhow, p. 120.) This is the first notice of the Columbia River.

In the year 1778 Captain Cook visited the west coast of North America, to which Drake had given the name of New Albion. On the 7th of March he reached the coast in 44 deg. of north latitude. He continued his exploration north, but passed the Columbia River without observing it. He discovered Nootka Sound, among other places, and having reached the land at the foot of Mount Elias (lat. 60° 18'), continued his course round the coast to the Aleutian islands. This was the first voyage in which any survey of the coast that can be relied on, or that even deserves the name, was made.

In 1779 Spain became involved in a war with Great Britain, and its flag did not again appear on the coast north of Cape Mendocino until 1788.—(Greenhow, p. 126.)

In 1789 the seizure was made of the 'Iphigenia,' the 'Argonaut,' the 'North-West America,' and the 'Princess,' at Nootka, by the Spanish captain, Martinez. Meares, the Englishman chiefly concerned in the adventure and trade in which they were engaged, may, and certainly seems to, have misrepresented several facts connected with it; he may have hoisted other colours than British, in order to evade a supposed infringement of the rights of the East India Company; and he may have demanded and obtained, as always happens in demands for indemnification, more than was actually lost; but Martinez certainly exceeded his authority, for he was specially instructed by the Viceroy of Mexico not to capture any British vessels on the north-west coast. The personal facts of the case are not of the slightest importance; the only question dependent on it is, whether or not the English or any other foreign nation had a right to trade on the coast, or, at this time, to make settlements upon it?

Now it is a clear and admitted fact that the government of Spain never made any settlement north of Cape Mendocino. The whole coast for upwards of 25 degrees north of this cape was waste, unsettled, and unoccupied. Through-

out the whole distance there was no person authorized to execute authority on the part of Spain, or any other power, at any single point.

The right of making settlements under such circumstances as these has been argued by Mr Greenhow, and his argument is too important, upon account of its admissions, to omit. He says—

"It should be observed with regard to the right of the Spanish government to take possession of Nootka, that before the 6th of May, 1789, when Martinez entered the sound with that object, no settlement, factory, or other establishment whatsoever, had been founded or attempted; nor had any jurisdiction been exercised by the authorities or subjects of a civilized nation in any part of America, bordering upon the Pacific, between Port San Francisco, near the 38th degree of north latitude, and Prince William's Sound, near the 60th. The Spanish, the British, the Russians, and the French had, indeed, landed at many places on these coasts, where they had displayed flags, performed ceremonies, and erected monuments, by way of 'taking possession,' as it is termed, of the adjacent territories for their respective Sovereigns; but such acts are, and were then, generally considered as empty pageants, securing no real rights to those by whom or in whose names they were performed. Nor does it appear that any portion of the above-mentioned territories had become the property of a foreigner, either by purchase, occupation, or any other title which can be regarded as valid.

"The right of exclusive sovereignty over these extensive regions was claimed by Spain in virtue of the papal concession in 1493, of the first discovery of the coast by Spanish subjects, and of the contiguity of the territories to the settled dominion of Spain. Of the validity of the title derived from the papal concession, it is needless in the present day to speak. That the Spaniards were the first discoverers of the west coasts of America, as far north as the 50th parallel of latitude, has been shown; and the fact is, and ever has been, since the publication of Maurelle's 'Journal' in 1781, as indisputable as that the Portuguese discovered the south coasts of Africa. The extent of the rights derived from discovery are, however, by no means clearly defined by writers on public law; and the practice of nations has been so different in different cases, that it seems impossible to deduce any general rule from it. That a nation whose subjects or citizens have ascertained the existence of a country, previously unknown, should have a better right than any other to make settlements in that

country; and, after such settlement, to own it, and to exercise sovereignty over it, is in every respect conformable with nature and justice; but this principle is liable to innumerable difficulties in its application to particular cases. It is seldom easy to decide how far a discovery may have been such, in all respects, as should give this strongest right to settle, or to what extent of country a title of sovereignty may have been acquired by a particular settlement. And even when the novelty, or priority, or sufficiency of the discovery is admitted, the right of prior occupation cannot surely be regarded as subsisting for ever, to the exclusion of all other nations; and the claims of states occupying contiguous territories are always to be taken into 'consideration.'"

Notwithstanding the alleged difficulty of determining when the government of a country, which has no title to occupy a vacant territory by reason of discovery, may occupy it as abandoned, the practice in such cases has been tolerably uniform. Discovery alone, and an alleged intention to occupy, certainly do not give a perfect title, unless an actual occupation takes place. Nor does the discovery of part of a great territory entitle the first settlers to take the whole. For instance, the continent of North America was first discovered by the English under Cabot; but the right, nevertheless, of the French to settle on it was never questioned. The southern part of the same continent was occupied by Spain, but the French, nevertheless, made the contiguous settlement of Louisiana. Where there is clear evidence of abandonment—where the discovery is not followed by preparations to occupy, a settlement may be made in opposition to a title of discovery. Where, also, the territory can be separated by any natural and distinct boundary—whether that of distance from prior settlements, or the physical facts of mountains or deserts—a settlement can be made in opposition to any previously made.

But "a settlement" must be understood to mean, the establishment of the laws or government of the persons making the settlement, with the consent and authority of the nation to which they belong. Without such an authority they are mere outcasts and vagabonds on a desert, and have no right to form a government of themselves. A colony of the mother country—that is, a body of settlers among whom the law of their country can be administered—can only be formed by the consent of their own govern-

ment. Discoveries actually accompanied by occupation, without such consent, do not entitle the settlers to any of the rights of their own government, or to exercise any power, even of the most inferior description, under the pretence of being a colony. A settler can only have the authority that is delegated to him, and without such a delegation he has no power. His occupation of new territory may be subsequently recognized by his own government; but unless it is so recognized, prior to any settlement being made by the authority of some other government, it does not become a dependency of the nation of the settler.

At the time the English were at Nootka, the coast was perfectly abandoned by Spain; there was no Spanish settlement on it. It was open to any nation to make a settlement, or to recognize any that had been made by its subjects without authority.

When the news arrived in England of the seizure of the vessels by Martinez, the British government claimed the right of having indemnification made to their owners; it determined to recognize any settlement that had been made, and it expressed its intention to make settlements on the west coast of America. On the 5th of May, 1790, a message of the Crown was delivered to Parliament, complaining "that no satisfaction was made or offered for the acts of seizure, and that a direct claim was asserted by the Court of Spain to the exclusive rights of sovereignty, navigation, and commerce, in the territories, coasts, and seas in that part of the world." The message was received by Parliament with much approbation, and the necessary supplies were very liberally granted to enforce the claims made.

In the declaration of Spain, dated Aranjuez, June 4, 1790, signed by the Conde de Florida Blanca, it is said that, "although Spain may *not* have establishments or colonies planted upon the coasts or in the ports in dispute, it does not follow that such coast or port does not belong to her." The British government alleged "that English subjects had an indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery; and to the possession of such establishments as they should form, with the consent of the natives of the country not previously *occupied* by any European nation."

On the part of Spain there was no declaration of an intention to occupy; and on the other side there was no

assertion of a right to occupy in case occupation had been already taken by an European power.

The dispute was terminated by the convention between Great Britain and Spain, signed at the Escurial, October 28, 1790. By the third article it was agreed that "the respective subjects of the contracting parties should not be molested in navigating or carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of *making settlements* there." But this article was subject to the restriction, that the government of Great Britain should prevent an illicit trade with the Spanish settlements, and that the British should not navigate or fish within ten leagues of the coast already occupied by Spain. And it was by the fifth article agreed, that as well in the places restored as "in all other parts of the north-western coasts of North America, or of the islands adjacent, situated to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made *settlements* since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access."

This convention was an admission of the right of the British government to make settlements, and the right sanctioned is not to be distinguished from that of Russia to its settlements on the north-west coast. The admission of this right was not granted as a licence, liable to be revoked or lost by a war—it was not made as a favour or concession. It is one of those agreements respecting territory—such, for instance, as the treaty of 1783, made between Great Britain and the United States—which a war does not revoke. The admission contained in the convention is of a principle to which the States of America, the colony of Canada, and the State of Louisiana, owe their existence. No new doctrine was set up. An old established rule was recognized, and a war would have been the result if it had continued to be contested.

Mr Adams, whose long and distinguished career in the highest offices of his country had made him familiar with these questions, was compelled to treat it as a definitive settlement of a general principle of national law (Greenhow, p. 341, n.). And the President Munroe, in his mes-

sage of December 2, 1823, admitted that no new principle had been asserted in the claims of Russia, and of Great Britain, to settle on the coast, but that the occasion had been found proper for asserting that "*henceforth* the American continents were not to be considered as subjects for European colonization"—a declaration against which the Courts both of Russia and of Great Britain protested. —(Greenhow, p. 336.)

The convention did not exclude Spain from making settlements if it should think fit; but on the part of Spain the right of Great Britain to make them was acknowledged, and the intention and right of making one at Nootka Sound was especially declared and allowed.

Much of the difficulty which has arisen upon this subject would have been avoided if the terms employed in this convention had been attended to. It was not the intention of the English government to let loose a body of men upon the west coast of America, free to act as they pleased, and to exhibit their passions in the licence and violence of a lawless condition. Nor was it the intention of the Spanish government to establish its law over them. The proposed "settlements" were to be those of a civilized nation, and necessarily implied their subjection to English law; and this, not for a temporary object, but in order to occupy the country, according to the open and distinct declaration of this purpose in the previous official correspondence.

When the convention was communicated to Parliament, it became the subject of party discussion, as every important communication to a popular assembly will be. The just and wisely-arranged treaty lately made between Great Britain and the United States respecting the north-eastern boundary of the United States—a treaty which ought, beyond all others, to have been accepted with unanimous approval, being a most honourable settlement of a most complex question, did not escape the bitter though fortunately impotent criticism of a party opposition. Such attacks, when great interests are at stake—when unanimity might be instructive and no principle is compromised—may be regretted, but the language of them is not to be adopted in the interpretation of the policy of those whose acts are condemned. Mr Fox, Lord Grey, and the Marquis of Lansdowne contended that by the convention of the Escurial, nothing had been gained and much surrendered.

"If the English," said Lord Grey, "form a settlement on one hill, the Spaniards may erect a fort on another." The English ministers did not enter into an explanation. They had not demanded the supplies, which enabled them to put afloat a great armament, in order to effect so absurd an arrangement as that described by the opposition, and Mr Pitt was too sagacious to have committed the blunders imputed to him. The instructions given to Captain Vancouver, who was commissioned to sail to the north-west coast of America, and to take possession of Nootka Sound, and to ascertain what parts of the coast were unsettled, were an official interpretation of the convention, and they certainly appear to have been drawn up in conformity with an agreement with the Spanish government. On the 4th of June, 1792, after the survey of a considerable extent of coast, Captain Vancouver, at Possession Sound, took possession, "with the usual formalities, of all that part of New Albion from the latitude 30° 20′ south, and long. 236° 26′ E. to the entrance of the inlet of the sea said to be the supposed Strait of Juan de Fuca, as also of all the coasts, islands, &c., within the said strait and both its shores."

On the 23rd of June Captain Vancouver met the Spanish schooners, the 'Sutil' and the 'Mexicana,' under the command of Galiano and Valdes. The communications between the commanders were of the most friendly character. At Nootka, Vancouver met the 'Dædalus,' with instructions from the British government, and he was referred to a letter brought by the same ship from the Count de Florida Blanca, addressed to the commandant of the fort of San Lorenzo at Nootka, ordering that officer, in conformity with the first article of the convention, to put his Britannic Majesty's commissioners in possession of the buildings and districts, or parcels of land which had been occupied by the English in April, 1789, as well in the port of Nootka as in Port Cox, situated about sixteen leagues further southward.

It is impossible to understand how it could ever have been inferred from these events that Great Britain and Spain had agreed to a "joint occupancy" of the country. The British government claimed the right, which it asserted was common to any civilised government, to take possession of vacant wastes. It never pretended to claim a joint occupation with Spain—for it was admitted that

Spain did not "occupy" the country—but simply a right common to it, Spain, &c., to settle in countries beyond the limits of any civilized government. This right being acknowledged, Vancouver took possession of the country from 39° 20' to the Strait of Juan de Fuca. This possession was taken exclusive of Spain. It was an act indicating the construction of the Nootka convention by the government of Great Britain. Nor is this all. The proceedings of Vancouver were published with the sanction of government in 1798. There was no concealment of what had been done. The official act by which the country was annexed to the British Crown was notified to all the world, and it was not followed by any remonstrance or adverse claim.

How, under these circumstances, could "joint occupation" be inferred? If there had been joint occupation, there must have been "joint law" administered—or, in fact, no law. The absurdity is convenient, in order to complicate the subject, but it has no foundation in the events of the Nootka contest.

The correspondence between Vancouver and the Spanish commandant, Quadra, differed respecting the extent of cession to be made; and they agreed to submit the matter to their respective governments.

The expedition of the 'Sutil' and the 'Mexicana' in 1792 was the last made by the Spanish government with the object of discovery in the North Sea. After this the Spaniards abandoned the coast in dispute, and never attempted to form an establishment upon it.—(Greenhow, p. 257.) The order for the abandonment of Nootka was not merely sent by the 'Daedalus,' but was communicated to that most eminent Viceroy of Mexico, the Count de Revillagigedo,—a name ever to be honoured.—(Greenhow, p. 227, n.)

After having taken possession of Nootka, Vancouver proceeded on the survey of the coast. Meeting with the American vessel the 'Columbia,' commanded by Gray, he was informed of the river noticed by Heceta, into which Gray had entered and named after his vessel. Broughton was sent to examine the river, and passed the bar. His survey extended inland for upwards of one hundred miles from where he anchored his ship. "Previously to his departure he formally took possession of the river and the country in its vicinity in his Britannic

Majesty's name, having every reason to believe that the subjects of no other civilised nation or state had ever entered the river before. In this opinion he was confirmed by Mr Gray's sketch, in which it does not appear that Mr Gray either saw or was ever within five leagues of its entrance."*

* The very bitter tone in which Mr Greenhow speaks of Captain Vancouver, and his complaint that Captain V. endeavoured to deprive Gray of the honour of having seen the Columbia River, is not justified by the facts. It appears by the log-book of the 'Columbia,' that Gray crossed the bar of the river on the 11th of May, 1792. At one o'clock he anchored. At noon of the 14th he weighed anchor; at four o'clock he had sailed upwards of twelve or fifteen miles, and at half-past four o'clock the ship took ground, when she was backed off and again anchored. On the 15th Gray dropped down the river, and the subsequent movements were to get the vessel out. On the 20th he got clear of the bar. The river he named the Columbia, and called one point of the entrance Adam's point, and the other Hancock's point.

These facts are no doubt correct. The log-book has been printed in reports of committees of Congress, and the copy verified by affidavit, in the belief that it contradicts the English statement of the case.

Captain Vancouver states (vol. ii, p. 53), that Broughton had with him a chart made by Gray—that he got to an inlet which he supposed the chart to represent, and passed Adam's point. After a minute description of the inlet, he says:—"This bay terminated the researches of Mr Gray, and to commemorate his discovery it was named 'Gray's Bay.'" This certainly proves that there was no wish to avoid acknowledging Gray's merits. The inlet from the sea to the river runs about east and west, and in the chart of Vancouver "Gray's Bay" is placed east of Adam's point, and far inland. On the 24th of October (1792) Broughton left the 'Chatham' in lat. 46° 17', having brought it as far within the bay as he thought safe, and as far as he had reason to suppose the 'Columbia' had been brought.—(Vancouver, vol. ii, p. 56.) He then proceeded to survey in a boat, taking with him a week's provisions. He proceeded up the river until the 30th, and calculated the distance he went, and which he particularly describes, "from what he considered to be the entrance of the river, to be eighty-four, and from the 'Chatham' 100 miles." That is, that the entrance of the river was sixteen miles (upwards of five leagues) above where he left the 'Chatham,' and consequently above where Gray anchored. He therefore came to the conclusion that Gray did not see what he called and explained to be "the entrance," and this conclusion is sustained by the distance mentioned in Gray's own log-book.

Thus the statement of Broughton and that of Gray are perfectly consistent, and there is nothing in Vancouver's relation of the facts of the case to justify the charge "that he possessed good temper and

Recognizing the merit of Gray, and admitting the claim that he is the first person who noticed the river after Heceta, who placed it on his chart within one mile of its true position,—still no claim can be set up on this account by the United States. The *discovery* of a river, after the coast adjoining it has been discovered, has no peculiar virtue to exclude rights connected with the discovery of the adjoining coast. Before Gray entered the river, the entire coast had been traced. The *possession* of a river may be followed with important inland rights; but Gray neither discovered it for the first time, nor had authority to take possession of it. In the discovery he had been anticipated by Heceta; he had no power to take possession, for he was in a private ship, pursuing his private affairs; and the private acts of an American citizen in such matters are not more important than similar private acts of English subjects.

The discovery of Gray has been put forth by the American government as the foundation of a title to the country. It took place in 1792; and therefore, if the government of Spain had any title to grant territory reaching to the Columbia in 1819, Gray's proceedings must have been hostile, and an invasion of Spanish territory. Gray, however, being a private person, could not have committed an

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good feelings, except with regard to citizens of the United States, against whom and their country he cherished the most bitter animosity." So far from this being so, he makes the fullest acknowledgment of Gray's services—he retained the name of "Adam's point" on his chart, and he adopted that of Gray's ship, the 'Columbia,' as the name of the river. The error that Mr Greenhow has made has arisen from his taking a single sentence without the context. The inlet may be considered as part of the river, but Broughton was justified in thinking it to be an arm of the sea. He concealed nothing, and gave his reasons for distinguishing the entrance of the river from the entrance to the inlet, for which he had the practice and authority of navigators. So far from misrepresenting the facts, the very evidence of Gray's log-book, which is produced to contradict him, verifies his statement. The veracity of Vancouver can never be disputed. He exhibited an anxious care to recognize the previous discovery of Gray, and no American who shall read the whole account—though he may say that the entrance to the river is the entrance to the inlet—can come to the conclusion that any fact has been misrepresented, or that there was any attempt to do injustice to Gray. If Broughton had not explained what he meant, there would have been reason to complain.

act of public hostility; but the setting up of this title is an admission by the American government that the country was, in 1792, open to be occupied by persons having the official authority of their government, as Vancouver had. Such an admission—and it has been formally and officially made—is destructive of any alleged right to the country, derivable from Spain.

The "taking possession" of new countries by authorized official persons in the formal manner that it was done by Vancouver, is not the idle ceremony Mr Greenhow represents it to be. By the law of England, the Crown possesses absolute authority to extend its sovereignty; it can send its diplomatist to treat for, its soldier to conquer, its sailor to settle new countries. This it can do independently of Parliament; and no act of the ordinary legislature is needed to establish English law and authority in such countries. A power of legislation is absolutely vested in the Crown for these purposes, which it can execute through the officers it may name. It can, also, as is well known to all Americans, legislate for such settlements independently of Parliament; or it may delegate its own power of legislation. The charter of Rhode Island granted by Charles II, and under which that State was governed until 1842, is an illustration of such legislation, and of the delegation of such authority. The Crown in that case, by its own legislative act, established English laws in that colony, and delegated its power of legislation to a very popular local legislature.

The "taking possession," therefore, of a new country by persons officially authorized—and no private person can assume the authority—is the exercise of a sovereign power, a distinct act of legislation, by which the new territory becomes annexed to the dominions of the Crown.

These principles were lately insisted on by the government *against* British subjects:—

"'Neither individuals,' said Governor Sir George Gipps, in a most luminous and admirable argument (New Zealand papers, May 11, 1841, No. 311, p. 64), 'nor bodies of men belonging to any nation, can form colonies except with the consent and under the direction and control of their own government; and from any settlement which they may form without the consent of their government they may be ousted. This is simply to say, that as far as Englishmen are concerned,

colonies cannot be formed without the consent of the Crown.' —'I thought a declaration of the nature of that which stands in the preamble necessary, upon the same grounds that it was thought necessary by the Committee of the House of Commons in 1837, and I think it is the more necessary now, when I see the gross ignorance which prevails upon this subject, even among persons otherwise well informed,—when I hear persons, and even lawyers, contend that Englishmen may set up a government for themselves whenever they like, and regardless alike of the Queen's authority and their own allegiance. Why, Captain Cook had as much right to purchase New Zealand for himself when he discovered it, or I had as much right to purchase the island of Tongatoboo from the chief of that country, who came to visit me the other day, as Mr Wentworth had to purchase the Middle Island of New Zealand from the savages who were in Sydney in February last. When I cast my eye over the vast Pacific, and the innumerable islands with which it is studded, and consider that one man may seize an island here and another an island there, and that by dint of making themselves troublesome, they may in the end render the interference of the government necessary, it is time to let people know that the law of England does not admit of such practices.'"

The constitution of other countries vests a similar sovereign authority in the Crown to that existing in Great Britain; but under the American constitution the President has no authority of the kind; he cannot annex territories to existing States, nor by his own act enlarge the boundaries of American dominions. The constitution has, in its first article, vested "all legislative power" in Congress. Before, therefore, the sovereignty of the United States can be established in a new territory, there must be an equivalent act of legislation by Congress to that necessary to be performed by the English Crown. How otherwise is it to be known to what country the territory belongs?

After a country has had a new territory formally annexed to it, there doubtless remain other acts to be performed to complete the title, such as actual settlement, &c.; or, otherwise, the inference of other countries is that the intention to occupy is abandoned. But the prior right to settle continues, even if there is a ground to imagine an intention to abandon, until some other country shall actually, and according to the forms which its laws

sanction, establish its own laws and authority in the country.

In 1805 Louis and Clarke, who had been commissioned in the previous year, by President Jefferson, to explore the country west of the Rocky Mountains, reached the Columbia River, and returned to the United States in 1806. But this act of exploration, not resting on an original right of discovery, nor accompanied by any act of American legislation respecting the country, nor by any attempt to occupy, clearly does not establish a title to the territory west of the mountains. Nor is such a title set up. "Politically, the expedition was an announcement to the world of the intention of the American government to occupy and settle the countries explored."—(Greenhow, p. 288.) But such intention had already been announced to the world by the English government in a public, authentic, and legal manner, and its sovereignty over the country declared.

In 1810 Captain Smith, from Boston, built a house and garden on the south bank of the Columbia, but abandoned it before the close of the year. This was the act of a private person, and no political inference can be drawn from it.

In the same year Jacob Astor, of New York, formed the "Pacific Fur Company." He communicated his intention to the British North-West Company, and offered to it one-third of the interest of the scheme. The proposal was not accepted; and it is asked "if Mr Astor, a citizen of the United States, was justifiable in thus offering to an association of British subjects, noted for its enmity to his adopted country, a share of the advantages to be obtained under the flag of the United States, from territories exclusively belonging to the United States, and of which the exclusive possession by the United States was evidently essential to the advantage and welfare of the republic?"—(Greenhow, p. 294.) An English subject would have been free to make such an offer. Exclusive possession of the country by the United States certainly did not exist, for it had not taken any step either to claim, to possess it, or to annex it. When the company was formed, "the majority not only of the inferior servants, but also of the *partners*, were British subjects."—(Greenhow, p. 295.) They made an establishment on the Columbia River, but in

consequence of difficulties, Macdougall and Mackenzie announced their determination, on the 1st July, 1812, to dissolve the company, and Mr Hunt, another of the partners, in August, 1813, acceded to it. On the 16th of October, 1813, an agreement was made between Messrs Mactavish and Alexander Stuart, on the part of the British North-West Company, and Messrs Macdougall, Mackenzie, and Clarke, on the other part, by which all the establishments, furs, stock in hand, of the Pacific Company, in the country of Columbia, were sold to the North-West Company for about 58,000 dollars. The difficulties which caused this dissolution might, it is said, have been overcome, "if the directing partners on the Columbia had been Americans instead of being, as the greater part were, men unconnected with the United States by birth, or citizenship, or previous residence, or family ties."—(Greenhow, p. 306.) It was, therefore, a settlement made by a majority of English, and the sovereignty of the English government having been declared over the country, they were amenable to English laws. Mr Astor could not annex the territory to the United States, and his sole object was to obtain furs. Shortly after the sale was made, a British sloop of war, the 'Racoon,' reached the Columbia, and the name of Fort George was given to the establishment.

Supposing, however, that the war between Great Britain and the United States had not broken out about this time, and that the 'Racoon' had brought to Columbia a judge, or a commission to any of the partners, to act as judge in the civil and criminal affairs of the colony, could the United States, or any other country, have insisted that he could not have exercised jurisdiction? Could any persons who were there have exempted themselves from the jurisdiction of such a court? But, on the other hand, let it be supposed that the President of the United States had sent a commission to any person to administer the law there, would that commission have been operative? Would the Supreme Court of the United States have held, that in countries over which the legislature of the United States has not established its law,—which had not been annexed to or possessed by its government, that the President could deal with men's lives, with their fortunes and property, or govern beyond the jurisdiction of American law?

The United States had not subjected the Oregon or the

Columbia to its authority. It formed no part of any existing State; it was not a portion of a territory over which it had legislated, or even claimed to legislate.

The British government, on the contrary, had declared its intention to establish its law there, and it had attached it to its dominions in a formal and authentic manner. When the North-West Company took possession of the establishment in 1813, an authorized colony of British subjects from that moment was formed, subject to and governed by English laws—an actual occupation of the country was made, and a settlement on the river has continued until the present day. The company was legally empowered to make such a settlement, and when made the English law prevailed over it. A more perfect title could not be proved.

At the termination of the war between Great Britain and America, a demand was made for the restoration of the post sold by Mr Astor's partners, as a portion of the territory of the United States taken during the war. The answer was, that it had not been captured; that the Americans had retired from it under an agreement of sale; that the North-West Company had purchased it; that the territory had early been taken possession of in his Majesty's name, as it had been by Broughton in Vancouver's expedition, and that it had been since considered to form a part of his Majesty's dominions.—(Greenhow, p. 307.) It was, however, agreed that the post should be restored, and "that the question of the title to the territory should be discussed in the negotiation on limits and other matters, which was soon to be commenced."*

This negotiation and its temporary settlement deserve particular notice. The United States contended that it had a right to the territory; it asserted this right in the most formal and solemn manner, and it received possession

* I cite this statement in the words of Mr Greenhow (p. 308), because in subsequent pages, which he heads 'British Views of National Faith' (310, 312), he declares that Fort George was delivered up without any reservation or exception, and expresses his disbelief that Sir Charles Bagot, the British minister, communicated to the American government, in pursuance of Lord Castlereagh's direction of the 4th of February, 1818, the fact that Great Britain claimed the territory, and insisted that the American settlement was an encroachment. The delivery was clearly the execution of the conditional agreement mentioned in the text.

of the post in consequence of its official remonstrance. Now it matters not whether its title, as against Great Britain, was valid or not. After this arrangement it could not, without violation of its honour and a breach of its engagements with Great Britain, enter into a treaty with Spain affecting the post in dispute; nor can it allege a title to it through Spain, without proclaiming to the world that the assertion of its pretensions in 1814 were without foundation, and that it knew them to be without foundation. This act of dishonour it must admit, if the treaty of 1819 is alleged to confer any title. A title in 1814, and a title under the treaty of 1819, are utterly inconsistent. If the treaty of 1819 is relied on, then it must be admitted that Great Britain was "in occupation" in 1814, when the post at Astoria was given up, and that this occupation was rightful as against the United States. That such occupation was rightful as against Spain has already been proved.

But if the allegation of the government of the United States, that its title to Astoria was rightful in 1814 is relied on, then it necessarily follows that the treaty of 1819 could only confer a right to territory south of the settlement of Astoria, and south, also, of the British settlements on the Columbia River, and that the territory north of Cape Mendocino was open to the settlement of other countries than Spain in 1814.

From these facts it is impossible that the government of the United States can extricate itself without dishonour, if its title to the Oregon Territory is insisted on.

It was probably from a knowledge of an intention to set up a claim, founded on the treaty of 1819, that the American government suspected that the ratification of this treaty was delayed through an intrigue of the British government. But we acted on that occasion as we have done in every transaction with the United States—in perfect good faith, and with the fullest reliance upon the honour of the American government; assuming no fraud or deception on its part, performing our own obligations affecting the rights of other parties, and only asserting rights to which we were justly entitled. When Lord Castlereagh received Mr Rush, the American minister, in September, 1819, he read to him part of the despatches of Sir Henry Wellesley, to prove that the wishes of the

British court had been made known to the Spanish cabinet in favour of the ratification of the treaty. These despatches were dated June 6 and July 6. In one, Sir Henry Wellesley distinctly expressed his opinion that the true interests of Spain would be best promoted by the ratification. Lord Castlereagh also added, that "the willingness of the British cabinet to accede to the possession of the Floridas by the United States might be inferred from the indirect offer which it had made two years before to mediate between the United States and Spain—an offer which had been declined." It was not then supposed to be possible, that the government of the United States would attempt, through that treaty, to evade the discussion of the questions which the settlement made by Mr Astor's partners on the Columbia had occasioned, and which were then pending.

From the facts above related, it may be inferred that Spain never occupied, but abandoned the west coast of North America; that the country was open to the settlements of other countries than that of Spain—even by the admission of the American government in its assertion of a claim to Astoria in 1814; that the British government in 1792 announced its intention to occupy, and formally declared the annexation of parts of the coast to its own territory, acting in this respect as the government of Russia has done; that the settlement at Astoria was a private and unauthorized proceeding; and that the British settlement on the Columbia was the first of a national and legal character recognizable as such by foreign nations.

The extent of the coast claim which the British government was entitled to insist on, in the subsequent negotiations, might have been sustained by the following principles, which were laid down by the American government in its communications with the Spanish minister in 1819:—

"First, that when any European nation takes possession of *any extent of sea coast*, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast—to all their branches, and the countries they cover; and to give it a right, in exclusion of all other nations, to the same.

"Secondly, that whenever one European nation makes a discovery, and takes possession of any portion of this continent,

and another afterwards does the same at any distance from it, where the boundary is not determined by the principles above mentioned, that the middle distance becomes such course.

"Thirdly, that whenever any European nation has thus acquired a right to any portion of territory on this continent, that right can never be diminished or affected by any power by virtue of purchases made by grants or conquests of the natives within the limits thereof."

That is, the British government, on authority of these texts of national law, which are perfectly correct, was entitled to a boundary which should include both banks of the Columbia River, and all the territory drained by it, including the whole coast line and other rivers, of which possession had been taken by Vancouver, under the orders of his government.

Secondly. By the 7th article of the treaty of Paris of 1763—which related only to Louisiana and Canada—the line drawn from the source of the River Mississippi to the south, gave to Great Britain all the lands on the east bank of the river, except New Orleans, and secured to France and through it to Spain, the territory west of the same line, as far as the Rocky Mountains or western boundary of Louisiana. But the territory of Canada, north of the source of the river (47° 10′ N. lat.), and north of a line running west from the source of the river, was left as part of Canada, of which it most indisputably formed a portion. This clearly appears from the official map engraved in 1757,* and used in the negotiations of 1762. The American and

* M. Duflot de Mofras, whose work on California, published at the expense of the government of France, exhibits no partiality towards the English, refers also to this map, and comes to the conclusion that the claims made by the Americans are without foundation:—

"Pour la limite du sud, le Mexique et l'Espagne ont agi de la même manière: ils ont concédé aux Etats-Unis leurs droits sur les contrées situées au nord du 42° parallèle; mais il est de toute évidence qu le traité des Florides ne saurait porter atteinte à la validité de la convention de 1790, il ne constitue qu'une simple renonciation, et les Etats-Unis en y adhérant, s'étant substitués à l'Espagne pour le territoire à l'égard duquel cette puissance résignait ses prétentions, doivent respecter tous les droits qu'un traité antérieur au leur avait reconnu aux Anglais. Si nous avions maintenant à émettre une opinion sur cette question importante, nous ne pourrions, malgré nos sympathies pour les Etats-Unis et notre aversion contre le système d'envahissement de l'Angleterre, nous empêcher de reconnaître que la raison et le droit son cette fois de son côté.

the British titles, at this point, are both derived from the French, and, consequently, what the French government marked in this official map of 1757 as Canada, excluded any subsequent claim to it as a part of Louisiana.

In the treaty made between Great Britain and the United States, nothing west of a line running north from the source of the Mississippi, to the line running due west of the furthermost point of the Lake of the Woods, was granted to the United States (ante, p. 7). All, therefore, north of a line running west, from the source of the Mississippi, that is, the country north of a parallel of latitude of about 47 degrees, was English territory, and formed part of Canada, unconceded by any treaty.

But the English government has neither insisted upon its title to the whole of the Oregon, or even to the whole of Canada—the latter of which would have been very prejudicial to American interests. In a treaty signed between the plenipotentiaries of Great Britain and the United States, in April, 1807, it was agreed that "a line drawn north or south (as the case might require) from the most north-western point of the Lake of Woods, until it shall intersect the 49th parallel of latitude, and from the point of such intersection due west, along and with the said parallel shall be the dividing line between his Majesty's territories and those of the United States, to the westward of the said lake, as far as their respective territories extend in that quarter—*provided* that nothing in the present article shall extend to the north-west coast of America, or to the territories belonging to or claimed by either party on the continent of America, to the westward of the Stony Mountains." Unlooked-for events prevented the ratification of the treaty, and the subject was not again discussed until 1814.*

Il est même permis de s'etonner que, répudiant sa ténacité habituelle, elle ait fait, aux Americans, dans le cours des negociations, de si larges sacrifices."

* The argument of Mr Greenhow (p. 281), that the reason was ill considered for adopting the 49th parallel of latitude, namely, the treaty of Utrecht, and the acts of the commissioners, is founded on so manifest an error respecting the extent of Canada, that it does not merit discussion. The adoption of the 49th parallel was a just arrangement, to both Great Britain and the United States, though it gave less than the former had a title to insist on. Mr Jefferson was perfectly satisfied with it—but feared that the allusion to any claim extending to the coast would be offensive to Spain.—(Greenhow, p. 282.) This was in 1807, after the purchase of Louisiana.

In 1818 a convention was ratified between Great Britain and America, after a long negotiation, in which the facts already related formed the basis, by which the rights of both countries were subjected to a temporary compromise. It was agreed that a line should be the northern boundary along the 49th parallel of latitude, from the Lake of the Woods to the Rocky Mountains, and that the country westward of the Rocky Mountains should be free and open for the term of ten years from the date of the convention to the vessels, citizens, and subjects of both powers, without prejudice to the claims of either country.

At the end of ten years the negotiations on this subject were again renewed. It was proposed by Mr Canning and Mr Huskisson that the boundary beyond the Rocky Mountains should pass from those mountains westward along the 49th parallel of latitude to the north-easternmost branch of the Columbia River, and thence down the middle of the stream to the Pacific. This was not agreed to, and the negotiation terminated for a time.

On the 6th of August, 1827, a convention was signed, renewing the provisions of the former one of October 20, 1818, and extending it for an indefinite period, until either party should annul it, on giving a year's notice.

Mr Farnham, perfectly forgetful that the American government, in its negotiations respecting the establishment at Astoria, has admitted that the Oregon Territory was open to the settlement of other countries than that of Spain, affirms, with singular inconsistency, that an American title adverse to Great Britain—and in fact to Spain—was formed through that settlement, and, also, that the sovereignty to the Oregon is vested in the government of America through a Spanish title (p. 52). In other words, that the American government possessed the sovereignty of the country in 1813, and did not possess it until 1819. His arguments to establish both these positions are equally long, and the one is perfectly conclusive against the other:—

"Drake (says Mr F.), an English pirate, entered the Pacific Ocean, and pretended to have visited the coast between the latitudes 37° and 48°."——"Elizabeth, while she knighted him, remunerated the subjects of the crown of Spain for the piracies he had committed. From such men's acts the laws of nations recognize no rights of nations to arise, because if it be

still insisted that Drake ever saw this coast (!), and that his discovery was for the benefit of the crown of England, still it avails nothing, inasmuch as Spain had already discovered and explored it several years before; and, in the fourth place, because England did not afterwards occupy by permanent settlement, as required by the laws in such cases governing."

If this argument is believed to be a sufficient reply to the English claim, it must be equally sufficient against any Spanish title. Whatever doubt there may be respecting the extent of Drake's discoveries, it must be admitted that, no permanent settlement having been made, there did exist a right in any other country to step in and occupy the land discovered. But this objection applies, also, to the Spanish title, for it is a known and admitted fact that, whatever may have been the discoveries of Spanish officers, no Spanish settlement was ever made north of Cape Mendocino, and that the question comes back to this point—by what parties, officially authorized to make settlements, was a settlement in the Oregon Territory first made? There is no doubt of the fact that it was first done under the sanction and authority of the British government. If the opportunity at any time existed for the government of Spain to have occupied the country, it never did so, and the country never formed any portion of its "provinces, dominions, or territories." This fact, which is conclusive in support of the British title, affords a perfect answer to another argument set forth by Mr Farnham, founded on the treaty of Utrecht of 1713. He alleges that "England for ever quit-claimed to Spain, and warranted for ever to her monarch and his successors, the north-west coast of North America as far as the Straits de Fuca" (p. 55). Need it be said that there is nothing in the treaty even indirectly referring to the north-west coast of America? But as one groundless assumption leaves the argument incomplete, another is needed, and, therefore, it is added, that—

"The title of Spain to those countries and seas was not only exclusive, so far as exclusive discovery could give a title, but that the guarantees of England and the other powers at the convention of Utrecht rendered all further acts, such as subsequent acts of occupancy, &c., unnecessary to perfect that title through all after time. For, by these guarantees, England and the other powers waived the necessity of occupancy, &c., required by the law of nations to perfect the inchoate rights of

prior discovery; and waived, also, the possibility, on the part of these powers, of acquiring by subsequent *discovery* or occupancy any right in the territories thus solemnly conceded by Spain."

This argument is certainly a singular jumble of contradictions and unauthorized assertions. The treaty, it is said, is still binding. If so, all the parties to it are bound to prevent the United States from interfering with Spanish territories; for the clause of the treaty cited in support of the argument is, that "neither the King of Spain nor any of his heirs or successors shall transfer or under any pretence alienate from themselves and the crown of Spain any provinces, dominions, or territories in America." If still in force, how came it that Spain alienated the Floridas in 1763? How has the United States become entitled to the Floridas? Was there no alienation in that case? But the argument admits that the Spanish government had no occupation of the country, and that "subsequent discoveries" on the west coast might be made: and then it is asserted, without any proof, that the government of Great Britain guaranteed the possession of dominions which Spain did not possess, and the possession of countries which were not discovered! And to make the absurdity complete, this treaty—which it is alleged was to prevent new discoveries and settlements of America by the English, and, by consequence, its present possession of the Oregon—is held by American authorities not to have been binding on the government of Spain to prevent the alienation, to the government of the United States, of any territory it might have possessed in Western America!

The treaty is entirely misunderstood by Mr Farnham; but his observations on it are valuable to prove how well satisfied he is that the title he endeavours to sustain is utterly invalid, and how perfectly well aware he is of its exact defects.

After having involved himself in absurdities and contradictions in his inferences from the treaty of Utrecht, Mr Farnham turns to the treaty of Paris of 1763, and affirms that this also has been violated by the British government.

"France, says he, had many reasons for obtaining from that unscrupulous neighbour (Great Britain) a guarantee of her territories 'west of the Mississippi,' and did so in the treaty

of Versailles (1762) as far as 49° north [47° 10', or source of the Mississippi]. If, therefore, she owned any land beyond the Mississippi valley, she ceded it to *France*. If she did not, she ceded her the right, as against herself, of *acquiring* title to all the territory lying west of the Mississippi and south of the 49th parallel of latitude [south of the source of the Mississippi]. How will British sophistry maintain her claim [the claim of Great Britain] to the Oregon, as against the grantee of France? To this treaty the United States, by the purchase of 1803, have become a party; and as by the treaties of Utrecht and Versailles, England has abandoned, in the one case, to Spain, as high as latitude 49° north on the north-western coast of America; and, in the other case, as high as 49° on the same coast; it becomes difficult to see with what pretence of right she now comes forward to recover what she has thus solemnly, by two several treaties, deferred to others."—"Although England, by virtue of the treaties of 1713 and 1763, was precluded from gaining any right of sovereignty from discovery or occupation, the United States have laboured under no such disposition."

To this argument the reply is complete. By the treaty of 1763 the boundary between Louisiana and the British possessions was "irrevocably" fixed. At that time the western boundary of Louisiana did not extend beyond the Rocky Mountains (ante, p. 11). The country beyond the mountains did not belong to France, and therefore this treaty had no reference to it. There was no cession of a right *to acquire* lands beyond the limits of the French possessions, and there is not a word in the treaty to this effect.

It has already been shown that the treaty of Utrecht has no reference whatever to the Oregon; yet these two arguments on the treaties of 1713 and 1763 have been set forth as conclusive against the claims of the British government. They do not in the slightest manner disturb the British title to the Oregon Territory founded on prior occupation—setting aside any discussion on the question of prior discovery—and Mr Farnham actually proves that Spain was not in a condition, in 1819, to confer any title to territory north of Cape Mendocino.

"We own (says Mr Farnham) Oregon *by purchase* from Spain, the sole discoverer and *first occupant* of its coast; *by purchase* from France, to whom England, by the treaty of Versailles,

relinquished her claim to it, and by our own discovery and prior occupancy of the Columbia River. Throughout this work incontrovertible authorities are relied on for historical facts, and for the construction given to the laws of nations. Out of her own mouth is Britain judged; and if this pamphlet shall serve to convince my countrymen of the insolent selfishness of Great Britain—her grasping injustice—her destitution of political honesty—and serve to show a necessity for the people to act for themselves, and to expect from the hands of their government at Washington the maintenance of the rights and honour of their country; the author (!!) will feel richly rewarded for whatever labour he has bestowed in collecting and arranging the evidence of their rights to the Oregon Territory—the whole of it, and nothing less."

It is not satisfactory to reprint such very ridiculous trash, but it affords a very good example of the malignancy of certain orators in America, and of the grave charges which are made to excite popular opinion against the government of this country.* The assertion that Spain was the first occupant of the coast is contradicted by Mr Farnham himself in his elaborate argument to prove that the treaty of Utrecht rendered any occupation of it by the government of Spain needless. That the English government relinquished the coast to France by the treaty of 1763 is impossible, for that treaty did not relate to territory not then occupied by the French; and Mr Farnham's own argument is directed to prove that the western coast, at that time, belonged to Spain. The facts of Gray's discoveries and of Astor's settlement need not be restated, having been already very fully investigated. The claims of Great Britain are neither unjust, selfish, nor dishonest.

* Persons who have remained a few months in America must have been often surprised at the constant repetition of paragraphs in the public papers accusing the English government of the expenditure of enormous sums of money for the acquisition of new territory, or in intrigues for this purpose. Sometimes we are said to be on the point of seizing Texas; at other times, that we have bought California, &c. Yet the writers of these articles are perfectly well aware that no money can be expended by the British government without the assent of parliament, and that the purchase of territory without such assent is impracticable. The impolicy of the intrigues with which we are charged does not excite the slightest doubt of the absurd designs imputed to us.

They have sprung from events, the present results of which were not foreseen. If American claims have come into competition with them, it has arisen from no act of the British government—and if they are opposed, it has not been for the purpose of aggrandizement, or in order to assert rights which are either untenable or unjust.

The extreme north-western part of the coast of North America forms a portion of Russian territory. The title to it is partly that of discovery, and partly that only of occupation. The chief establishments, if not the only ones, formed on it, were made subsequently to the year 1798, when the coast from the 55th degree of north latitude, northwards, was conceded to the Russian American Company. The company was authorised to explore and to bring under subjection to the Imperial Crown, any other territories in America, not previously attached to the dominions of some civilized nation.—(Greenhow, p. 269). So that the Russian government, six years after the dispute between Spain and Great Britain respecting Nootka Sound, acted on the principle admitted in the convention of the Escurial, and directed establishments to be formed on vacant and unsettled parts of the coasts.

In 1824, a convention was signed between the government of the United States and Russia, by the 3rd article of which it was agreed, that the citizens of the United States should not form settlements to the north of 54° 40′ of north latitude, and that the subjects of Russia should not form establishments to the south of that parallel. The principle upon which this convention proceeded cannot be distinguished from that on which the claim of the British to part of the coast is founded. But if the government of the United States anticipated the squeezing out of British claims by this union with Russia, it was checked by the convention made in 1825, between Great Britain and Russia, by which the boundaries of the Russian territory are very distinctly defined, and the intended effect of the convention with the United States—as far as the United States was interested in it—was checked.

An argument has been advanced in favour of the claim of the United States on the ground of *contiguity*. But it is one of even more force, if it has any, in favour of Great Britain than of the United States. It means, if anything, that part of the territory claimed is essential to the perfect

enjoyment of contiguous territory. Now the western trade of North America is chiefly that of peltries obtained by the English, and exported from Fort Vancouver, on the Columbia, and an access to the river is important to its continuance.

In the state above mentioned the question at this time remains. The negotiations that have been renewed for its settlement have been confided to the Right Hon. Mr Pakenham, the British minister at Washington, who will not be directed to propose, nor would he ask, or demand, anything inconsistent with a just or a proper respect for American as well as British claims. Whatever concession the facts of the case admit of, will be perfectly consistent with the honour and the interests of the British government. But hitherto the American government has not shown the slightest title to concession, nor established its right to the territory which it demands.

Notwithstanding the remarks which have been made by American writers, the British government has acted with great temper and moderation. It has not placed its case on extreme rights, and it has been actuated by a very sincere desire to maintain friendly relations with the United States. The errors of fact which have been committed in the course of former negotiations, have been upon very immaterial points, not in the slightest degree affecting the main question.

It is greatly to be lamented, however, that in America it should have been the interest of dishonest and violent politicians to have adopted a tone of discussion upon the subject opposed to its fair settlement. It is not honourable, while the title to the territory is undetermined between the respective governments, to urge measures to *populate* it with American citizens, in order to give facilities for its occupation at a future period. Such recommendations do not indicate a conviction of the validity of the claim insisted on. America, as well as Great Britain, has an interest in the establishment of a settled government in that part of the world—in marking out the limits of legal possession—and in rearing a population which, however they may differ respecting the system of government which they may prefer, shall look to the future, as bringing the fruits of a peaceful, generous, and civilized intercourse. The dispute is one that ought not to excite

the exhibition of temper or of passion. It does not, as yet, affect the trade, fortune, or interests of a single American. The ambition of both governments ought to be to decide it, so that peace—the greatest glory of civilization—may be preserved. That this will be the endeavour of the British government there can be no doubt. Those who conduct the negotiation will make it from a sense of honour and a care for the interests of the world, and they will be sustained by the mighty national resources, which allow of the concessions that have been made, and authorize them to insist upon what is just.

It is stated, and probably correctly, that the British government has offered to the government of the United States to submit the dispute to the arbitration of some foreign power. Nothing could be more proper, and no measure could be suggested better calculated to terminate it, amicably and satisfactorily. Some frantic American politicians may oppose it, and may claim the credit of very patriotic motives if they succeed in continuing what will soon become a very idle and useless discussion; but even these men will be the first to be condemned by their own countrymen, when the consequences of their opposition shall interfere with fruits of the honourable rewards of labour, and those of commerce which follow in the train of a generous and enlightened system of diplomacy.

ERRATA.

Page 40, line 17, erase "that."

„ 41, „ 3, for "by" read "to."

„ 42, „ 20, for "disposition" read "disability."

„ 43, „ 16, for "malignancy" read "malignity."

„ 46, last lines, read thus:—"when the consequences of their opposition shall interfere with the honourable rewards of labour, and those fruits of commerce which follow in the train of a generous and enlightened system of diplomacy."

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